

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**CONVOLVE, INC.**

**v.**

**DELL INC. ,  
WESTERN DIGITAL CORPORATION,  
HITACHI GLOBAL STORAGE  
TECHNOLOGIES, INC., and  
HITACHI LTD.**

**No. 2:08-CV-244-CE**

**DELL INC.'S REPLY ON ITS MOTION FOR CLARIFICATION**

Although Convolve's application of the Court's construction has been to the contrary, both Dell and Convolve apparently now agree that a "data storage device" *can* or *may* include a processor. (Motion p. 1; Response p. 3). And the parties agree this interpretation is consistent with the Court's claim construction. With this apparent agreement among the parties in mind, Dell merely asks for clarification of the Court's construction so that the fact finder can determine when the data storage device includes a processor.

The Court addressed this issue in its claim construction order when it construed a data storage device as a "device for storing data comprising a magnetic disk and a disk drive head wherein the disk drive head is operative to move across the surface of the disk and read and write data." Critically, in its construction, the Court used the words "comprising" and "operative." "Comprising" means that the data storage device includes at least the magnetic disk and disk drive, but may include more components. And "operative" means a processor must be involved for the disk drive head to move across

the surface of the disk and read and write data. Otherwise, the disk drive head is not operative because a processor, among other components, is necessary to make the disk drive head operative to move across the surface of the disk to read and write data.

As the Court recognized, and as Convolve now concedes, the processor that operates the disk drive head can be internal or external to the “data storage device.” If the accused hard disk drive includes a processor that contributes to the function of storing data or causes the magnetic disk to move across the surface of the disk to read and write data, then the data storage device includes that processor.

Dell submits that the proper construction of the term “data storage device” is a matter for the district court. In contrast, whether the accused “data storage device” has an internal processor that makes it operative within the meaning of the Court’s claim construction and whether that processor meets the other claim limitations are factual issues for the fact-finder.

In sum, Dell asks that the Court clarify its construction of data storage device to confirm that a data storage device may, depending on the operation of the device, include a processor. If the hard disk drive includes a processor and if that processor contributes to the functions of storing data or causes the magnetic disk to move across the surface of the disk to read and write data as found in the Court's construction, the processor is part of the data storage device.

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By: /s/ Roger Fulghum

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was filed electronically on May 2, 2011 pursuant to Local Rule CV-5(a) and has been served on all counsel who are deemed to have consented to electronic service.

/s/ *Deron R. Dacus*  
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